

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

BARBARA MOMEYER,

Plaintiff,

vs.

BANK OF AMERICA, N.A., a national  
banking association; JOHN DOE I; and  
DOES I through X, and ROE BUSINESS  
ENTITIES I through X, inclusive,

Defendants.

Case No.: 2:14-cv-01608-GMN-GWF

**ORDER**

Pending before the Court is a Motion to Reconsider (ECF No. 24) filed by Plaintiff Barbara Momeyer (“Plaintiff”). Defendant Bank of America, N.A. (“Defendant”) filed a Response. (ECF No. 31).

**I. BACKGROUND**

Plaintiff allegedly tripped and fell over a crack in the cement outside of a Bank of America located at 1140 E. Desert Inn Rd., Las Vegas, Nevada on June 12, 2012. (Compl. ¶¶ 6–7, ECF No. 1–1). During discovery, Plaintiff requested Defendant provide “any and all documents pertaining to any changes, modifications, repairs, and/or maintenance to the area where the subject incident occurred from the date of the incident to the present.” (Mot. Reconsider 3:1–4, ECF No. 24). Defendant did not respond to Plaintiff’s discovery requests to Plaintiff’s satisfaction. (*Id.* 3:5–9). Plaintiff filed a Motion to Compel (ECF No. 15) after Plaintiff and Defendant failed to resolve the discovery issues on their own (*Id.* at 3:10–16).

On April 9, 2015, Magistrate Judge George Foley, Jr. heard Plaintiff’s Motion to Compel and ruled that documents merely showing that the crack was repaired were not discoverable because such evidence would be inadmissible at trial as a subsequent remedial

1 measure. (*See* Audio of Apr. 9, 2015 Hearing, 9:52:09AM–9:55:07AM). Plaintiff  
2 subsequently filed the instant Motion to Reconsider. (ECF No. 24).

## 3 **II. LEGAL STANDARD**

4 Local Rule IB 3–1 provides that “[a] district judge may reconsider any pretrial matter  
5 referred to a magistrate judge in a civil ... case ... where it has been shown that the magistrate  
6 judge's ruling is clearly erroneous or contrary to law.” A ruling is clearly erroneous if the  
7 reviewing court is left with “a definite and firm conviction that a mistake has been committed.”  
8 *Burdick v. C.I.R.*, 979 F.2d 1369, 1370 (9th Cir. 1992). The district judge may affirm, reverse,  
9 modify, or remand with instructions the ruling made by the magistrate judge. LR IB 3–1(b).

## 10 **III. DISCUSSION**

11 Plaintiff argues that Judge Foley erred when he “denied Plaintiff’s Motion to Compel  
12 discovery of any and all documents pertaining to any changes, modifications, repairs, and/or  
13 maintenance to the area where the subject incident occurred from the date of the incident to the  
14 present. (Mot. to Reconsider 3:17–22, ECF No. 24). However, Plaintiff misinterprets Judge  
15 Foley’s ruling. At the hearing, Plaintiff argued for the discoverability of pictures, reports, and  
16 documentation related to subsequent remedial measures solely for the purposes of determining  
17 the dimensions of the crack. (*See* Audio of Apr. 9, 2015 Hearing, 9:53:13AM–9:53:43AM).  
18 While Judge Foley held that such evidence merely showing that the crack had been repaired  
19 would not be discoverable, he also held that evidence related to subsequent remedial measures  
20 containing information related to the dimensions of the crack would be discoverable as Plaintiff  
21 requested. (*See id.*, 9:53:43AM–9:55:07AM). Thus, Judge Foley merely limited discovery  
22 related to subsequent remedial measures to what Plaintiff requested at the hearing—documents  
23 that demonstrated the dimensions of the crack. (*See id.*, 9:53:13AM–9:55:07AM).  
24 Accordingly, because Plaintiff’s arguments are premised on a misstatement of Judge Foley’s  
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1 holding, the Court finds that Plaintiff failed to meet her burden to show that the ruling was  
2 “clearly erroneous” or “contrary to law.”

3 **IV. CONCLUSION**

4 **IT IS HEREBY ORDERED** that Plaintiff’s Motion to Reconsider (ECF No. 24) is  
5 **DENIED.**

6 **DATED** this 18 day of August, 2015.

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13 Gloria M. Navarro, Chief Judge  
14 United States District Judge  
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